

CCRB INVESTIGATIVE RECOMMENDATION

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|---|--|---------------------------|--|--|--|
| Investigator: Catherine McCaw | Team: Team # 4 | CCRB Case #: 200409635 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input checked="" type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 09/29/2004 8:45 PM | Location of Incident: § 87(2)(b) Queens | Precinct: 105 | 18 Mo. SOL 3/29/2006 | EO SOL 3/29/2006 | |
| Date/Time CV Reported Thu, 09/30/2004 10:55 AM | CV Reported At: Precinct | How CV Reported: Phone | Date/Time Received at CCRB Thu, 09/30/2004 10:55 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) |

| Subject Officer(s) | Shield | TaxID | Command |
|-----------------------|--------|--------|---------|
| 1. POM Anthony Salato | 24592 | 926403 | 105 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. POM Joseph Durante | 23084 | 923791 | 105 PCT |
| 2. POF Jennifer Matos | 29429 | 928725 | 105 PCT |
| 3. POM Christop Alden | 22004 | 918681 | 105 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.POM Anthony Salato | Abuse: PO Anthony Salato stopped the car in which § 87(2)(b) was an occupant. | § 87(2)(b) |
| B.POM Anthony Salato | Abuse: PO Anthony Salato frisked § 87(2)(b) | § 87(2)(b) |
| C.POM Anthony Salato | Force: PO Anthony Salato used physical force against § 87(2)(b) | § 87(2)(b) |
| D.POM Anthony Salato | Force: PO Anthony Salato used a chokehold against § 87(2)(b) | § 87(2)(b) |
| E.POM Anthony Salato | Off. Language: PO Anthony Salato made remarks to § 87(2)(b) based upon race. | § 87(2)(b) |

Synopsis

On September 29, 2004, § 87(2)(b) was driving down Springfield Blvd in Queens at approximately 7:45 PM. He was stopped in his own driveway at § 87(2)(b) after making a U-turn (Allegation A). PO Anthony Salato, who was driving the police vehicle during the stop, approached the car and, after § 87(2)(b) got out of the car, conducted a frisk (Allegation B). After PO Salato informed § 87(2)(b) that he would receive five Vehicle & Traffic Law summonses, an argument ensued, and PO Salato placed § 87(2)(b) under arrest. He approached § 87(2)(b) pushed him against a car parked in the driveway (Allegation C) while allegedly holding him in a chokehold (Allegation D). After PO Salato had pushed § 87(2)(b) against the car, he allegedly banged § 87(2)(b)'s head twice against the trunk. Relatives of § 87(2)(b) intervened on his behalf after § 87(2)(b) was in handcuffs and convinced PO Salato not to arrest § 87(2)(b). In lieu of arresting him, PO Salato issued § 87(2)(b) two criminal summonses. While he was writing up the two additional summonses, he detained § 87(2)(b) in the patrol car and allegedly said to him, "You niggers think you run these streets. You niggers ain't shit" (Allegation E).

§ 87(2)(b) received a total of seven summonses as a result of the incident. He received VTL summonses for driving without a seatbelt, talking on a cellular telephone while driving, driving with a broken taillight, driving with a broken brake light and driving with expired insurance. He also received summonses for § 87(2)(b). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) filed a complaint in person at the 105th Pct. station house on September 30, 2004. On October 7, 2004, § 87(2)(b) made an initial CCRB statement over the telephone. On October 15, 2004, § 87(2)(b) was interviewed at CCRB. § 87(2)(g)

On September 29, 2004, at approximately 8:45 PM, § 87(2)(b) was driving his car, a blue 1988 Toyota Corolla, down Springfield Blvd in Queens. His cousins, § 87(2)(b) and one other male were all in the car with him. Around § 87(2)(b) St., § 87(2)(b) noticed an unmarked police car in the lane next to him. The vehicle was in a "left-turn only" lane and signaling that it was going to turn left, but instead of doing so, it continued straight through the traffic light, following § 87(2)(b)'s vehicle. § 87(2)(b) made a U-turn, and the police car also made a U-turn, following him. After § 87(2)(b) pulled into the driveway of his house, § 87(2)(b) the police vehicle turned on its lights and pulled into the driveway behind § 87(2)(b).

Four officers, subsequently identified as PO Anthony Salato, PO Jennifer Matos, PO Joseph Durante and PO Christopher Alden, emerged from the patrol car and approached § 87(2)(b)'s vehicle. PO Salato instructed § 87(2)(b) to get out of the car and proceeded to frisk him.

After returning from writing a number of summonses in his patrol car, PO Salato returned to § 87(2)(b)'s vehicle and threw the summonses at the car. Noticing that one of the summonses was for driving without a seatbelt, a violation that § 87(2)(b) contends he had not committed, § 87(2)(b) argued that he was not going to pay the summons. PO Salato "flew into a rage," charged § 87(2)(b) picked him up in a chokehold, dragged § 87(2)(b) past his own car (breaking off the driver's side mirror in the process) and pushed him against a car parked in the driveway. PO Salato's biceps was

pressed against § 87(2)(b)'s neck, and § 87(2)(b) had difficulty breathing a result of PO Salato's grip. PO Salato then banged § 87(2)(b)'s right temple twice against the truck of the car before placing him in handcuffs. During this time, § 87(2)(b) stated that the three passengers in his car and the other officers remained near § 87(2)(b)'s car. § 87(2)(b) stated in his CCRB interview that as a result of having his hip banged against the driver's side mirror, he had sustained a bruise that had caused him to limp. In his initial civilian complaint report, however, he alleged damage to his hand instead.

PO Salato placed § 87(2)(b) into the back of the patrol car and began to rewrite the summonses. While the two were alone together, PO Salato commented to § 87(2)(b) "You niggers think you run these streets. You niggers ain't shit." He then gave § 87(2)(b) new copies of all the summonses. § 87(2)(b) could not articulate what happened to the original copies of the summonses.

As a result of the incident, § 87(2)(b) received five traffic summonses, 1) illegal U-turn, 2) driving with expired insurance, 3) broken taillight, 4) driving without a seatbelt, and 5) broken brake light, and two criminal summonses, § 87(2)(b). He never sought medical treatment for the injuries he allegedly sustained as a result of the incident.

Results of Investigation

§ 87(2)(b) and § 87(2)(b)'s cousins and two of the three passengers in the car on the date of the incident, accompanied § 87(2)(b) to the CCRB for his interview on October 15, 2004, and they also were interviewed on the same day. Although § 87(2)(b) stated that members of his girlfriend's family also witnessed the incident. § 87(2)(g)

On September 29, 2004, both § 87(2)(b) and § 87(2)(b) were passengers in § 87(2)(b)'s car traveling to § 87(2)(b)'s residence. Both observed an unmarked patrol car pull up beside them at a stoplight near § 87(2)(b)'s home. The car was signaling that it was going to turn, but instead of turning at the light it went straight through, following § 87(2)(b)'s vehicle. § 87(2)(b) made a U-turn to reach his residence. The patrol car also made the U-turn and turned on its lights after § 87(2)(b) had already pulled into his driveway.

Both § 87(2)(b) and § 87(2)(b) observed that the officers approached the car and asked § 87(2)(b) to step outside his vehicle. According to § 87(2)(b) PO Salato frisked § 87(2)(b) soon after asking him to get out of his car. § 87(2)(b) did not see PO Salato frisk § 87(2)(b) but he added that he was not watching carefully the entire time. Soon later, PO Salato issued § 87(2)(b) a number of summonses, and an argument ensued over the summonses. § 87(2)(b) claimed that § 87(2)(b) ripped one of the summonses out of PO Salato's hands, a summons for failure to wear a seatbelt, and began to protest that he had been wearing his seatbelt. § 87(2)(b) observed that PO Salato subsequently threw all of the summonses at § 87(2)(b)'s rolled up driver's side window.

§ 87(2)(b) stated that after the two had been arguing for a while, § 87(2)(b) turned away from PO Salato, and PO Salato charged § 87(2)(b) grabbed him and pushed him to a second car in the driveway. While PO Salato was holding § 87(2)(b) against the second car, he banged § 87(2)(b)'s head against the car and held § 87(2)(b) in a chokehold. § 87(2)(b)'s observations were similar, although he observed PO Salato place § 87(2)(b) in a chokehold while he was pushing § 87(2)(b) against the car. He also stated that he did not see PO Salato bang § 87(2)(b)'s head against the car, but he again stated that he was not paying very close attention to the proceedings.

After § 87(2)(b) was in handcuffs, the officers instructed § 87(2)(b) and § 87(2)(b) to leave the scene. § 87(2)(b) walked up the street a short distance, and § 87(2)(b) returned to his home by bus.

Officer Identification. PO Anthony Salato was identified through his signature and tax number on the summonses he issued. During his CCRB interview, he stated that PO Jennifer Matos, PO Joseph Durante and PO Christopher Alden were working with him that day. All three confirmed their presence during the incident in their CCRB interviews.

Officer Statements

PO Anthony Salato

PO Salato was interviewed by the CCRB on November 12, 2004. He stated that he was working anti-crime at the time of the incident in plainclothes and in an unmarked car.

Memobook entries. “1945—Car stop Springfield & 117th Ave. 2010 96 x 5 96C x 2/ Spt. 11868/250 prep. by PO Durante.”

Officer notes on summonses. “I observed deft. traveling n/b on Spring & 118 Ave. at traffic light, along w/ 3 other males in veh. I observed deft. not wearing seatbelt—observed shiny portion of the buckle over deft. left shoulder. I further observed deft. speaking on a cell phone (to ear). Upon conducting traffic stop, it was further observed deft. had a defective drivers side tail and brake light. Deft. produced an expired insurance card.”

“Deft. was observed throwing a traffic summons to the ground that was issued to him for failure to wear his seatbelt (as driver). Deft. stated to PO Salato, “I ain’t payin’ for this shit you pig—why don’t you go to Dunkin’ Donuts and eat another jelly donut. Deft. was also observed using obscene and abusive language. Deft. did grab his crotch with his right hand and state to PO Matos, “Suck it, bitch.” This action caused a crowd to gather from neighboring homes.”

CCRB Statement

At approximately 7:45 PM, on September 29, 2004, PO Salato was driving down Springfield Blvd in the Bronx. He pulled up to an intersection and observed the driver of the vehicle next to him, § 87(2)(b) speaking on his cellular telephone and driving without a seatbelt. After following the vehicle, PO Salato witnessed it make an illegal U-turn. He decided to stop the vehicle.

He turned on the turret light, and § 87(2)(b) pulled into a nearby driveway. PO Salato never learned that the driveway was § 87(2)(b) s own. He informed § 87(2)(b) of the infractions that he had committed and requested his insurance information. After PO Salato handed § 87(2)(b) the five traffic summonses, § 87(2)(b) crumpled up a few of them and threw them on the ground, stating, “I ain’t paying for this shit, you fucking pig! Why don’t you go to Dunkin’ Donuts and eat another jelly donut.” He also grabbed his crotch and said to PO Matos, “Suck it, bitch!” Because § 87(2)(b) was making a scene in public, acting combative and attracting a crowd, PO Salato decided to put him in handcuffs and considered arresting him for disorderly conduct. Prior to PO Salato’s issuance of summonses, PO Salato never had reason to place § 87(2)(b) under arrest.

PO Salato approached § 87(2)(b) and attempted to put him in handcuffs. § 87(2)(b) retracted his arms from PO Salato’s grasp and refused to turn around. As a result, PO Salato had to turn him around forcefully and place § 87(2)(b) against his own vehicle. § 87(2)(b) continued to withdraw his arms, so PO Salato had to hold him down in order to restrain him. Other officers assisted him in putting § 87(2)(b) in handcuffs, but PO Salato did not recall which ones. While § 87(2)(b) was struggling, PO Salato touched him at various points on his body, including his shoulder. He did not touch § 87(2)(b) on his neck at any point in time. Although § 87(2)(b) was moving around, his head did not touch the car, nor did his hip bump against the side mirror. PO Salato frisked § 87(2)(b) twice during the encounter: once briefly while he was attempting to get § 87(2)(b) in handcuffs and another time more thoroughly after § 87(2)(b) had been placed in handcuffs. PO Salato never had reason to believe that § 87(2)(b) was in possession of a weapon.

After § 87(2)(b) was in handcuffs, an elderly couple who lived in the house where the encounter took place spoke with PO Salato. They informed PO Salato that § 87(2)(b) was their nephew and that he was going to attend a surprise birthday party the next day. PO Salato used his discretion and heeded their request that § 87(2)(b) not be arrested. Instead, he decided to give § 87(2)(b) two criminal

summonses: one for § 87(2)(b) and one for § 87(2)(b). While he was writing the summonses, he placed § 87(2)(b) in the back of the police car. While they were in the police car, no discussion of note took place. PO Salato gave § 87(2)(b) the summonses and released him. He denied using the word “nigger” while speaking with § 87(2)(b).

PO Joseph Durante, PO Christopher Alden and PO Jennifer Matos

PO Joseph Durante was interviewed on November 19, 2004 at CCRB. PO Christopher Alden was interviewed on November 23, 2004. PO Jennifer Matos was interviewed on December 3, 2004. Neither PO Alden, nor PO Matos had any memobook entries related to the incident.

Memobook—PO Joseph Durante. “1940 1 male stopped 118 Ave & Springfield. § 87(2)(b) § 87(2)(b). Possible CPW. Bulge on waistband.”

CCRB Statements

§ 87(2)(g) They said that after the two cars pulled into § 87(2)(b)'s driveway, PO Salato approached § 87(2)(b)'s vehicle and informed him that he would be receiving summonses. PO Alden and PO Matos stated that § 87(2)(b) immediately became “irate.” According to PO Durante, PO Salato frisked § 87(2)(b) after seeing a bulge at his waistband. PO Durante did not personally see the bulge, nor did he tell PO Durante on the scene that he saw one. PO Salato collected § 87(2)(b)'s paperwork and went back to the patrol car to write up his summonses. Neither PO Matos, nor PO Alden recalled seeing a frisk.

According to PO Matos and PO Alden, § 87(2)(b) approached the patrol car and began to argue with PO Salato about the summonses. They stated that because of § 87(2)(b)'s arguing, PO Salato placed § 87(2)(b) under arrest. Although PO Salato did not verbalize his reasons for doing so, they believed that the agitated way in which § 87(2)(b) was waving his arms, as well as his proximity to PO Salato, was threatening and therefore grounds for placing § 87(2)(b) under arrest.

§ 87(2)(g) PO Durante stated that after PO Salato handed his paperwork back to § 87(2)(b), § 87(2)(b) threw it in PO Salato's face in anger, saying, “I don't want this shit [i.e. the summonses].” Before this point, PO Salato had no reason to place § 87(2)(b) under arrest in PO Durante's view. By throwing the summonses in PO Salato's face and attracting a crowd, however, PO Salato had reason, in PO Durante's view, to place § 87(2)(b) under arrest for § 87(2)(b). PO Durante also stated that PO Salato did not verbalize his reason for arresting § 87(2)(b).

PO Durante observed that § 87(2)(b) was standing near the front fender of his own car, and PO Salato moved toward him to place him in handcuffs. PO Salato spun § 87(2)(b) around and moved him about a foot towards a second car in the driveway. As PO Salato was moving § 87(2)(b), PO Durante did not witness § 87(2)(b) bumping against his own car. § 87(2)(b) kept avoiding PO Salato's attempts to place him in handcuffs by pulling his hands away, so PO Salato leaned § 87(2)(b) against the car with his stomach against the trunk. PO Durante could not determine from his vantage point whether § 87(2)(b)'s head bumped against the car at any point. PO Durante did not see PO Salato touch § 87(2)(b)'s neck. Another officer helped PO Salato put § 87(2)(b) in handcuffs, but PO Durante could not recall who. PO Alden confirmed that he had assisted PO Salato in placing § 87(2)(b) in handcuffs, but he did not recall any specific details, merely that § 87(2)(b) was resisting. PO Matos also stated that she observed PO Alden assist PO Salato in placing § 87(2)(b) under arrest, but she did not recall any specific details of the physical encounter.

All three observed that an elderly couple intervened on § 87(2)(b)'s behalf and convinced PO Salato not to place § 87(2)(b) under arrest. PO Durante said that he was sitting in the patrol car with PO Salato during part of the time that he was with § 87(2)(b). He did not recall hearing anything out of the ordinary during the time he was in the car.

Officer and Civilian Histories. § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

PO Anthony Salato has no substantiated CCRB cases.

§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Undisputed and Disputed Facts

Both parties agree that PO Salato stopped § 87(2)(b)'s vehicle after § 87(2)(b) made a U-turn. § 87(2)(b) became upset after he learned that he was going to receive five summonses from PO Salato. PO Salato decided to put § 87(2)(b) in handcuffs and, in the process of doing so, placed him against a car in the driveway. § 87(2)(g)

Credibility Assessment

§ 87(2)(g)

Allegation A: Abuse of Authority: PO Anthony Salato stopped § 87(2)(b)'s vehicle.

By his own admission, § 87(2)(b) made a U-turn immediately prior to being pulled over. PO Salato believed that § 87(2)(b) had violated the Vehicle and Traffic Law of the state of New York (VTL) in making this U-turn and stated that this belief, combined with his observation that § 87(2)(b) had violated the VTL by speaking on a cellular telephone while driving and driving without a seatbelt, motivated the stop. § 87(2)(g)

Allegation B: Abuse of Authority: PO Anthony Salato frisked § 87(2)(b)

§ 87(2)(g) According PO Salato, he frisked § 87(2)(b) concurrent with placing him under arrest, and the arrest justified the frisk. § 87(2)(g)

§ 87(2)(b) the complainant and his cousin stated that PO Salato frisked § 87(2)(b) shortly after PO Salato first approached the car, a sequence of events supported by PO Durante, who also stated that PO Salato frisked § 87(2)(b) before issuing him the summonses.

Both PO Salato and PO Durante agreed that prior to the issuance of the summonses, § 87(2)(b) was not acting unruly enough to merit placing him under arrest. § 87(2)(g)

§ 87(2)(b) PO Durante stated that PO Salato did have evidence that § 87(2)(b) may have been in possession of a weapon because there was a bulge at § 87(2)(b)'s waistband. PO Durante did not see this bulge personally, however, and when asked, PO Salato stated that he never had any evidence that § 87(2)(b) was in possession of a weapon.

§ 87(2)(g)

Allegation C: Force: PO Anthony Salato used physical force against § 87(2)(b)

§ 87(2)(b) stated that while PO Salato was attempting to place him in handcuffs, he pushed § 87(2)(b) against a car and banged his head against its trunk. PO Salato stated that § 87(2)(b) resisted arrest and that use of force was necessary to place him in handcuffs. § 87(2)(g)

Allegation D: Force: PO Anthony Salato used a chokehold against § 87(2)(b)

§ 87(2)(b) stated that PO Salato placed him in a chokehold while he was pushing him. His statement are corroborated by both of his cousins, but denied by all of the police officers on the scene. According to the officer's accounts, § 87(2)(b) was generally argumentative and obnoxious, said obscene things to PO Matos and resisted arrest. § 87(2)(g)

Allegation F: Offensive Language: PO Anthony Salato made racially offensive remarks to § 87(2)(b)

§ 87(2)(b) stated that while he was in the patrol car alone with PO Salato, PO Salato said to him, "You niggers think you run this town. You niggers ain't shit." PO Durante confirmed that PO Salato was alone in the car with § 87(2)(b) for a short period of time, but he stated that while he was in the car with the two of them, PO Salato did not say anything of note to § 87(2)(b). PO Salato also denied making these statements. § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: